

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES' RESPONSE TO DEFENDANT WILSON'S
"MOTION AND SUPPORTING MEMORANDUM TO EXCLUDE THE
ADMISSIBILITY OF CO-CONSPIRATOR STATEMENTS" (DOC. 725)

COMES NOW the United States of America, by and through David C. Iglesias, United States Attorney for the District of New Mexico, and James R.W. Braun, Assistant United States Attorney for said District, and hereby responds to defendant Dennis Wilson's "Motion and Supporting Memorandum to Exclude the Admissibility of Co-Conspirator Statements" (Doc. 725) as follows:

1. As noted in defendant Dakota Fitzner’s motion regarding co-conspirator statements (Doc. 730) and defendant Greg Hill’s amended unopposed motion regarding co-conspirator statements (Doc. 735), the United States does not oppose holding a pretrial hearing to determine the admissibility of co-conspirator statements in this case and agrees to submit a list of the statements that it intends to introduce at trial two weeks prior to such a hearing.

2. Defendant Wilson's assertion that any co-conspirator statement where the declarant is unavailable should be excluded under *Crawford v. Washington*, 541 U.S. 36 (2004), is incorrect. Because co-conspirator statements are non-testimonial, *Crawford* does not bar their admission at trial. *United States v. Delgado*, 401 F.3d 290, 299 (5th Cir. 2005); *United States v. Hendricks*, 395 F.3d 173, 182-84 (3rd Cir. 2005); *United States v. Reyes*, 362 F.3d 536, 540-41 (8th Cir. 2004).

Respectfully submitted,

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United States Attorney

/s/ *James R.W. Braun*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing pleading was mailed on this 7th day of November to Robert Gorence, attorney for Dennis Wilson, and to Joe Romero, Jr., and Jody Neal-Post, attorneys for Dana Jarvis (Notice of Joinder, Doc. 741).

/s/ *James R.W. Braun*

JAMES R.W. BRAUN
Assistant U.S. Attorney